

CALVIN H. HAYDEN  
SHERIFF



DOUGLAS G. BEDFORD  
UNDERSHERIFF

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## **Testimony to the House Committee on Federal & State Affairs in Favor of HCR 5022**

January 20, 2021

Chairman Barker, Vice Chair Arnberger, Ranking Member Ruiz, and Members of the Committee:

The Johnson County Sheriff's Office asks for your support for HCR 5022. This bill addresses a problem that exists in Kansas, which was amplified during the 2021-2022 Johnson County Charter Commission.

Today, with all the issues that face our country, state, counties and cities, due to an unusual situation, such as the pandemic, or local government conflict, a response to those issues has been to propose appointing sheriffs rather than electing them. Appointing a sheriff would be the equivalent to a county police department. A sheriff would lose his or her independent authority as the chief law enforcement officer of the county. Appointing a sheriff would be the same as appointing a police chief with all the political entanglements that involves. Police chiefs are beholden to the person who appointed them to their position, while an elected sheriff is beholden to the electorate that voted him or her into office.

### **Brief History of the Office of Sheriff**

Historically, sheriffs have been part of the United States since its inception and sheriffs have been elected to their position since the early 1800's. Across the country popular election of sheriffs is the norm. Forty-six states elect sheriffs and of those forty states do so a partisan basis. Alaska and Hawaii do not have sheriffs.

There has been experimentation with an appointed sheriff over an elected one in some states. Those that have returned to an elected sheriff. The lone exception that I am aware of is King County, Washington. The sheriff was elected there until 1968 until the Home Rule Charter of the county was amended, and the position was changed to an appointed one. After a couple of terms, the sheriff's office was returned to an elected position. They recently went back to appointment last year during the COVID pandemic.

There are approximately 3100 elected sheriffs in the United States. In states that have put the issue of appointing a sheriff rather than electing one, the voters have almost universally opposed the change.

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### Reasons we Support Electing the Sheriff

- (A) Sheriffs provide a check and balance as an elected county official directly responsible to the citizens that protects from undue influence by members of the Board of County Commissioners or other county officials.

Sheriffs are also checked and balanced in that they can be removed from office for violating state law, misfeasance or nonfeasance of duty, or corruption. County commissions have authority to approve the sheriff's budget, subject to state law.

- (B) In a republic, the citizens should have the right to choose our sheriff. The sheriff is one of the most powerful offices in county government and should not be controlled by the politics of a county commission but instead by the citizens who the sheriff is charged, by state law, to protect.
- (C) Election of the sheriff is the norm across the United States – and Kansas, except for Riley County. Historically, elected sheriff offices perform more efficiently and with more continuity of operations than those who are appointed and are subject to the whims of the county board of commissioners.
- (D) An elected sheriff provides stability and continuity of office. Citizens know what to expect and are not subject to political responses by a body that appoints someone to the position. The sheriff answers to the citizens and not the appointing body.

### Johnson County Charter Commission

Johnson County is undergoing its review of the county charter. This happens every 10 years. Amendments to the charter are offered by the Charter Commission – an appointed body of 25 members who are beholden to the organization or person that appointed them.

I was appointed to the Charter Commission for this review and have heard several members of the commission offer an amendment and explain it was at the request of the organization or person who appointed them. One of those amendments was to appoint the sheriff.

My focus as a member, as it was when I was an elected official, is the citizens of the county. During the public hearings that occurred as part of the charter process, I cared more what the citizens were saying, rather than what the members of the charter commission were saying.

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Two court cases bring the importance of the office of sheriff, as an elected official, to light:

**Nielander, 275 Kan. 257, 267 (2003)** where the Kansas Supreme Court stated in their opinion that a county sheriff "is an independently elected officer whose office, duties, and authorities are established and delegated by the legislature. The powers of the office of sheriff "are coextensive with the legislature." "The sheriff is not a subordinate of the board of county commissioners."

**Myers v. Brewer, NO. 17-2682, 2018 U.S. Dist.** opinion stated that boards of county commissioners in Kansas "lack authority to determine how a county sheriff...expends budgeted funds."

In our view, the office of sheriff should remain an elected office, not subject to the political whims of appointing bodies. This leaves the sheriff free to be able to respond to ***any*** situation as his or her training and experience dictate.

We ask that you recommend HCR 5022 favorably for passage.

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